IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 13 OF 2007
IN
WRIT PETITION NO. 3473 OF 2004

Maker Chambers V Premises
Co-operative Society Limited
and another. ... Petitioners.

V/s.

Municipal Municipal Corporation
and others. ... Respondents.

K.K.Singhvi, senior counsel with Ms.A.R.Joshi
for the respondents in support.

K.R.Bulchandani i/b. Kamal & Co.
for the petitioners to show cause.

CORAM: V.C.DAGA, J.

DATED: 5th March 2007.

P.C.:

. Heard rival parties. . Perused motion.

2. This motion is taken by the Municipal Corporation for modifying the interim order dated 17th January, 2005. By the order of this Court dated 17th January, 2005 the following interim relief was granted:

> " In view of the aforesaid interim order and having regard particularly to the interim order passed by the Division Bench on 23rd December 2004, the demand made by the Municipal Corporation on the basis of the enhancement in the ratable value shall remain

> stayed during the pendency of these proceedings subject to the condition that the petitioners shall continue to deposit the property taxes on the basis of the ratable value as fixed prior to the enhancement which forms the subject matter of dispute in these proceedings. The arrears, if any, shall be deposited with the Corporation within four weeks from today. The Petitioners shall file an undertaking within four weeks that in the event of the petition being rejected and the enhanced assessment being sustained, the Petitioners shall make the payment of the amount on the basis of the revised assessment within three months of the decision of the petition with such rate of interest as may be directed by the Court."

3. This notice of motion has been taken out on the basis of the judgment of the Division Bench dated 27th March, 2006 in **Municipal Corporation of Greater Mumbai v. Dalamal Tower Premises Co-operative Society Limited**, 2006 (3) Bom.C.R. 557, whereunder the revised assessment made by the Corporation came to be upheld.

4. The above judgment of the Division Bench was a subject matter of a special leave petition filed under Article 136 of the Constitution of India before the Supreme Court.

5. The Supreme Court, on 11th September, 2006, was pleased to grant interim directions reading as under:

> "The recovery on the basis of revised enhanced assessment from the appellants is stayed; subject to the condition that besides the

> undisputed amount, the appellants also deposit with the respondent- Corporation fifty per cent of the difference between the assessment and the revised enhanced assessment within a period of six weeks and also give an undertaking that in case the appeal is dismissed and revised assessment is upheld, the balance amount would be paid with interest at the rate of 6-1/4%. Likewise, the Principal Assessor and Collector, on behalf of the Commissioner and the Corporation, will file an undertaking that in case the appeals are allowed and revised assessment is set aside, fifty per cent of the payment made on the basis of the revised assessment would be refunded to the appellants with the same rate of interest i.e. 6-1/4%."

6. In view of the above order that has been passed by the Supreme Court on 11th September, 2006 it is necessary and appropriate that interim orders that may be passed by this Court in matters involving a similar issues must be consistent and in consonance with the directions issued of the Supreme Court. In the circumstances, the interim order dated 17th January, 2005 is modified and in place thereof the following interim directions are substituted, which shall operate during the pendency of this petition. Hence the following order:

O R D E R

. The recovery on the basis of the revised enhanced assessment from the petitioner is stayed subject to the

condition that besides the undisputed amount the petitioner also deposits with the Municipal Corporation 50% of the difference between the assessment and the revised enhanced assessment within a period of six weeks and also give an undertaking that in case the appeal is dismissed and the revised assessment is upheld, the balance amount would be paid at the interest of 6-1/4% per annum. Similarly, the principal assessor and collector shall file an undertaking on behalf of the Commissioner and the Municipal Corporation, that in case the petition is allowed and the revised assessment is set aside, 50% of the payment made on the basis of the revised assessment would be refunded to the petitioner at the same rate of interest, viz. 6$^{1}/_{4}$%. The notice of motion is, accordingly, disposed of.

(V.C.DAGA, J.)